IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7960 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JILUSINH ALIAS JILIYA PRUTHAVISINH PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, challenging the legality of order of detention dated 16.12.1999 (Annexure `A') passed by respondent no.1 on the ground that the petitioner is a dangerous person within the meaning of section 2(c) of the Gujarat Prevention of Anti-social

Activities Act, 1985 (in short `the Act') and further that activities of the petitioner are prejudicial to the maintenance of the public order.

2. Looking to order of detention Annexure `A' grounds for which the petitioner is detained (Annexure`B'), the detenu is involved in six type of criminal cases mainly for an offence punishable under Section 379 of IPC, lodged in different police station in Gujarat State. That all six cases are pending for trial in the criminal courts. Over and above, the detaining authority relied on statements of two witnesses recorded by PSI. As per the case of the detaining authority, the identity of these two witnesses have not been disclosed by claiming privilege under section 9(2) of the Act. As per the submission of Ms.Kachhavah, the said statements were recorded on 14.12.1999 and the detaining authority verified that two statements on 16.12.1999, and on the very same day i.e. 16.12.99 the detaining authority passed an order of detention which is challenged in this writ petition.

3. Learned advocate for the petitioner has argued that the detaining authority had no time to apply his mind before passing order of detention because on the very day he verified the statements of two witnesses and thereafter he passed the detention order on 16.12.99. Ms.Kachhavah has placed reliance on a decision of the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and ORs. reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec. 9(2) of the Act. Here in this case he had no time to do such type of exercise to verify whether this persons are fictitious persons or not whether the statements are bogus statements or not. In that case also the statements of said two witnesses were recorded on 16.12.1992 and the detention order was passed on 17.12.1992. In that case also there was no material to show as to why the detaining authority has exercised the power under sec.9(2) of the Act. Ultimately this Court held that section 9(2) of the Act has affected the detenu's right of making effective representation under Article 22(5) of the Constitution and, therefore, in that case continued detention of the detenu was held to be bad, illegal and the impugned detention order was quashed and set aside. The facts of the present case squarely fall within the facts and circumstances of the cited case.

4. Here in this case, none of the respondents have

filed any affidavit-in-reply. This Court has deprecated the method of not filing the written reply in the matter in Special Civil Application No.6322 of 1999 decided on 11th February, 2000.

5. In view of discussion made hereinabove, the order of detention which is challenged in this Special Civil Application is bad in law and same is required to be quashed and set aside. Accordingly the detention order dated 16.12.1999 passed by respondent No.1 in respect of petitioner is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any other criminal case. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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